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SIPDIS

STATE FOR S/CT, L/LEI, EB/ESC, AND EUR/AGS

USDOJ FOR CRIMINAL DIVISION, OFFICE OF TERRORISM AND VIOLENT  
CRIMES - TERESA WALLBAUM

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SUBJECT: German High Court Restricts Police Surveillance

**1. SUMMARY:** On March 3, the First Senate of the Federal Constitutional Court in Karlsruhe sharply restricted application of a 1998 law authorizing the electronic surveillance of private homes for law enforcement purposes. The Court ruled that police eavesdropping in private residences is a violation of the German Constitution's guarantee of human dignity and limited the practice to cases where serious crimes are concerned (involving a possible sentence of over five years) are concerned. Law enforcement officials expressed concern that the precedent will restrict Germany's ability to monitor suspected organized crime and terrorist activities. However, the restrictions will affect only a small number of the relatively infrequent cases where electronic surveillance is used in private homes. END SUMMARY.

#### BACKGROUND

**2.** After 15 years of debates, the Kohl government -- at that time trying to fight the spread of organized crime -- reached agreement with the opposition Social Democrats/SPD in 1998 to authorize police to enter private homes for surveillance purposes (the law required a two-thirds legislative majority). German liberals (then in coalition) generally opposed the law: Federal Justice Minister Sabine Leutheuser-Schnarrenberger (FDP/Free Democrat) resigned over the plan in 1996, and after the law went into effect, former FDP ministers Leutheuser-Schnarrenberger, Burkhard Hirsch and Gerhard Baum filed a constitutional challenge against it.

#### VERDICT AND IMPLICATIONS

**3.** Article 13 of the German constitution guarantees the sanctity of private homes. Judges ruled that electronic surveillance is not an inherent violation of Article 13, but certain ways of executing electronic surveillance in private homes could conflict with Article 1 Para 1, which guarantees the invulnerability of human dignity, the most important basic right in the constitution. The state may not eavesdrop on personal conversations with family members or confidants (lawyers, priests, and doctors) in private homes, and electronic surveillance is permissible only when police have evidence in advance that conversations are likely to provide information on illegal activities. The court banned surveillance where the suspect is alone in his home with family members who are not involved in any criminal activity, and in cases of misdemeanors and less serious felonies (those involving prison terms of less than five years), and stipulated the police must delete any private conversations immediately. The Court gave the Federal Government until June 30, 2005 to comply with the new regulation. Two of the eight judges, Renate Jaeger and Christine Hohmann-Dennhardt, published a minority opinion strongly opposing police eavesdropping in private homes.

**4.** The German police union criticized the verdict as a setback for the fight against organized crime in Germany. The Federal Ministry of Justice took a more positive stance, noting that the court upheld police surveillance (albeit under restrictive conditions). The Ministry further noted that almost 90 percent of the cases of electronic surveillance of private homes already involved very serious crimes and would be still admissible under the Federal Constitutional Court ruling. Also, tPolice use this investigative method in relatively few cases has been employed is relatively low, with a (total of 119 cases between 1998 and 2002). Some liberal politicians welcomed the new restrictions -- such as Baden-Wuerttemberg Minister of Justice Corinna Werwick-Hertneck (FDP) -- while others called for further safeguards against invasion of privacy.

**5. COMMENT:** The verdict imposes several restrictions on eavesdropping on private residences. For example, suspicion of mere support for a terrorist organization can no longer form the basis for eavesdropping on private homes, since that crime carries a maximum sentence of under five years. It should be noted, however, that this surveillance technique has always been a last resort and has been used infrequently in the past. The ruling did not address Other

other forms of technical surveillance were not addressed in  
the ruling.. END COMMENT.

BODDE